

CHAPTER 24:05:26

SUSPENSION

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24:05:26:01.01. Suspension from school -- Definitions. Terms used in this chapter and chapter 24:05:26.01 mean:

(1) "Controlled substance," a drug or other substance identified under SDCL 34-20B-11 to 34-20B-26, inclusive;

(2) "Dangerous weapon," a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury. The term does not include a pocket knife with a blade of less than 2 1/2 inches in length;

(3) "Illegal drug," a controlled substance, but does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under SDCL 34-20B-11 to 34-20B-26, inclusive, or under any provision of federal law; and

~~(4) "Substantial evidence," beyond a preponderance of the evidence.~~

(4) "Serious bodily injury," bodily injury that involves:

- (a) A substantial risk of death;
- (b) Extreme physical pain;
- (c) Protracted and obvious disfigurement; or
- (d) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:26:01.02 Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this chapter, is appropriate for a student with a disability who violates a code of student conduct.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:26:02.01. Change of placement for disciplinary removals. For purposes of removal of a student with a disability from the student's current educational placement under this chapter, a change of placement occurs if:

- (1) The removal is for more than ten consecutive school days; or
- (2) The student is subjected to a series of removals that constitute a pattern because ~~they~~:
 - (a) They cumulate to more than ten school days in a school year and because ;
 - (b) Of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another; and
 - (c) The student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals.

The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:26:02.02. Removals -- Ten school days or less. To the extent removal would be applied to students without disabilities, including alternative settings, school personnel may order the removal of a student with a disability from the student's current placement to an appropriate interim alternative educational setting or another setting, or they may order suspension for not more than ten consecutive school days, for any violation of a code of student conduct school rules, and additional. Additional removals of not more than ten consecutive school days in that same school year may be ordered for separate incidents of misconduct if those removals do not constitute a change of placement under § 24:05:26:02.01.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:26:02.03. Required services -- No change of placement. A school district need not provide services during periods of removal under § 24:05:26:02.02 to a student with a disability who has been removed from his or her current placement for ten school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed. If a student with a disability has been removed from his or her current placement for more than ten school days in that school year, and the removal is not for more than 10 consecutive school days and is not a change in placement, the district, for the remainder of the removals, shall provide services to the extent necessary to enable the student to ~~appropriately progress~~ participate in the general curriculum and ~~appropriately advance to progress~~ toward meeting achieving the goals set out in the student's IEP. School personnel, in consultation with at least one of the student's ~~special education teacher~~ teachers, shall determine the extent to which services are necessary to enable the student to participate ~~appropriately progress~~ in the general curriculum and ~~appropriately advance to progress~~ toward meeting achieving the goals set out in the student's IEP.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:26:08.01. Authority of school personnel -- Weapons, and drugs, and serious bodily injury. School personnel may remove a student ~~order a change in placement of a student with a disability~~ to an appropriate interim alternative setting ~~for the same amount of time that a student without a disability would be subject to discipline,~~

but for not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the student's disability, if:

(1) The student carries a weapon to or processes a weapon at school, on school premises, or at school or to a school function under the jurisdiction of a state or local education agency; ~~or~~

(2) The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency; or

(3) The student has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the state education agency or a school district.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:26:08.02. Authority of hearing officer. ~~A hearing officer under section 615 of the Individuals with Disabilities Education Act may order a change in the placement of a student with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing:~~

~~(1) Determines that the district has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others;~~

~~(2) Considers the appropriateness of the student's current placement;~~

~~(3) Considers whether the district has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and~~

~~(4) Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's education teacher meets the requirements of § 24:05:26:09.02.~~

A hearing officer under this article hears and makes a determination regarding an appeal under this chapter. In making the determination under this section, the hearing officer may:

(1) Return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of this chapter or that the student's behavior was a manifestation of the student's disability; or

(2) Order a change of placement of the student with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

The procedures under this section may be repeated if the school district believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:26:08.03. Parental Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the school district shall notify the parents of that decision and provide the parents the procedural safeguards notice described in chapter 24:05:30.

Source:

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:26:09.01. Functional behavioral assessment and intervention plan. Within ten business days after first removing a student for more than ten school days in a school year or for weapons violations, drugs violations, or behavior that is substantially likely to result in injury to the student or to others, the following actions shall be taken by the school district:

~~(1) If the district did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the student before the behavior that resulted in the suspension occurred, the district shall convene an IEP team meeting to develop an assessment plan;~~

~~(2) If the student already has a behavioral intervention plan, the IEP team shall review the plan and modify it, as necessary, to address the behavior;~~

~~(3) As soon as practicable after developing the plan described in subdivision (1) of this section, and completing the assessments required by the plan, the district shall convene an IEP team meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions;~~

~~(4) If a student with a disability who has a behavioral intervention plan and who has been removed from the student's current educational placement for more than ten school days in a school year is subsequently subjected to a removal that does not constitute a change of placement under § 24:05:26:02.01, IEP team members shall review~~

~~the behavioral intervention plan and its implementation to determine whether modifications are necessary.~~

~~If one or more of the IEP team members believe that modifications are needed, the committee shall meet to modify the plan and its implementation to the extent the committee determines necessary.~~ Repealed.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:26:09.02. Determination of interim alternative educational setting. The student's IEP team shall determine the Any interim alternative educational setting in which a student is placed under §§ 24:05:26:08.01, 24:05:26:02.01, and 24:05:26:09.05. ~~24:05:26:08.02 shall:~~

~~(1) Be selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current individualized education program, that will enable the student to meet the goals set out in the individualized education program; and~~

~~(2) Include services and modifications designed to address the behavior described in §§ 24:05:26:08.01 and 24:05:26:08.02 that are designed to prevent the behavior from recurring.~~

~~The individualized education program team shall determine an interim alternative educational setting referred to in § 24:05:26:08.01.~~

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:26:09.03. Manifestation determination review requirement. ~~If an action is contemplated by school district personnel or a hearing officer that involves removing a student for weapons violations, drug violations, behavior that is substantially likely to result in injury to the student or to others, or other behavior that violates any rule or code of conduct that applies to all students which results in a change of placement under § 24:05:26:02.01, the following actions shall be taken by the school district:~~

~~(1) Not later than the date on which the decision to remove the student is made, the parents must be notified of that decision and provided the procedural safeguards notice in this article; and~~

~~(2) As soon as possible, but in no case later than ten school days after the date on which the decision to remove the student is made, a review must be conducted of the~~

~~relationship between the student's disability and the behavior subject to the disciplinary action.~~

Within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the school district, the parent, and relevant members of the student's IEP team, as determined by the parent and the district, shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

- (1) Whether the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
- (2) Whether the conduct in question was the direct result of the school district's failure to implement the IEP.

The conduct must be determined to be a manifestation of the student's disability if the district, the parent, and relevant members of the student's IEP team determine that a condition in either subdivision (1) or (2) of this section was met.

If the district, the parent, and relevant members of the student's IEP team determine that the condition described in subdivision (2) of this section was met, the district shall take immediate steps to remedy those deficiencies.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:26:09.04. Determination that behavior was a manifestation. Procedures for conducting a manifestation review. ~~The IEP team and other qualified personnel in a meeting shall conduct a manifestation determination review. In carrying out the review, the team may determine that the behavior of the student was not a manifestation of the student's disability only if the team:~~

~~(1) First considers, in terms of the behavior subject to disciplinary action, all relevant information including:~~

- ~~(a) Evaluation and diagnostic results, including the results of other relevant information supplied by the parents of the student;~~
- ~~(b) Observations of the student; and~~
- ~~(c) The student's individualized education program and placement; and~~

~~(2) Then determines that:~~

~~(a) In relationship to the behavior subject to disciplinary action, the student's individualized education program and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies~~

~~were provided consistent with the student's individualized education program and placement;~~

~~(b) The student's disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to disciplinary action; and~~

~~(c) The student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.~~

~~If the team determines that any of the above standards in this section were not met, the behavior must be considered a manifestation of the student's ability. The manifestation determination review described in this section may be conducted at the same IEP team meeting that is convened to address a functional behavioral assessment and behavioral intervention plan. If the review identifies deficiencies in the student's IEP or placement or in their implementation, the district must take immediate steps to remedy those deficiencies.~~

If the school district, the parent, and relevant members of the IEP team determine that the conduct was a manifestation of the student's disability, the IEP team shall either:

(1) Conduct a functional behavioral assessment, unless the district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the student; or

(2) If a behavioral intervention plan already has been developed, review the behavioral intervention plan and modify it, as necessary, to address the behavior.

In addition, and except as provided in § 24:05:26:08.01, the IEP team shall return the student to the placement from which the student was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:26:09.05. Determination that behavior was not manifestation of disability - - Additional authority of school personnel. ~~If the results of the manifestation determination review indicate that the behavior of the student with a disability was not a manifestation of the student's disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which they would be applied to students without disabilities, except that a free appropriate public education shall continue to be made available to those students consistent with this article.~~

~~The student's IEP team shall determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP if the student is removed because of behavior that has been determined not to be a manifestation of the student's disability.~~

~~If the school district initiates disciplinary procedures applicable to all students, the district shall ensure that the special education and disciplinary records of the student with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.~~

~~If a parent requests a hearing to challenge the determination that the behavior of the student was not a manifestation of the student's disability, the student shall remain in the student's current educational placement as described in chapter 24:05:30 or interim alternative educational setting consistent with § 24:05:26:09.07, whichever applies.~~

For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability pursuant to this chapter, school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, except as provided in this section.

A student with a disability who is removed from the student's current placement pursuant to this section or § 24:05:26:08.01 must:

(1) Continue to receive educational services, as provided in this article, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and

(2) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:26:09.06. Parent appeal Appeal. ~~If the student's parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding placement for disciplinary purposes, the parent may request a hearing. The school district shall arrange for an expedited hearing in any case described in this section if requested by the parent. In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the district has demonstrated that the student's behavior was not a manifestation of the student's disability consistent with § 24:05:26:09.04. In reviewing a decision to place the~~

~~student in an interim alternative educational setting, the hearing officer shall apply the standards under § 24:05:26:08.02.~~

The parent of a student with a disability who disagrees with any decision regarding placement under this chapter or with the manifestation determination, or a school district that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to this article.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

~~**24:05:26:09.07. Placement during appeals.** If a parent requests a hearing regarding a disciplinary action described in §§ 24:05:26:08.01 and 24:05:26:08.02 to challenge the interim alternative educational setting or the manifestation determination, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the 45 day time period provided for, whichever occurs first, unless the parent and the school district agree otherwise.~~

~~If a student is placed in an interim alternative educational setting pursuant to §§ 24:05:26:08.01 and 24:05:26:08.02 and school personnel propose to change the student's placement after expiration of the interim alternative placement during the pendency of any proceeding to challenge the proposed change in placement, the student must remain in the current placement (the student's placement before the interim alternative education setting) except as provided in this section.~~

~~If school personnel maintain that it is dangerous for the student to be in the current placement (placement before removal to the interim alternative education setting) during the pendency of the due process proceedings, the district may request an expedited due process hearing. In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards under § 24:05:26:08.02. A placement ordered pursuant to this section may not be longer than 45 days. The procedure in this section may be repeated as necessary.~~

If an appeal under this chapter has been made by either the parent or the school district, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in § 24:05:26:08.01 or § 24:05:26:09.05, whichever occurs first, unless the parent and the state education agency or school district agree otherwise.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:26:09.08. Expedited hearing -- Procedures. ~~An expedited due process hearing shall:~~

~~(1) Result in a written decision being mailed to the parties within forty-five (45) days of the district's receipt of the request for the hearing without exceptions or extensions;~~

~~(2) Meet the hearing rights requirements under chapter 24:05:30, except that the time periods for disclosure of records and evaluations are not less than two business days; and~~

~~(3) Be conducted by a due process hearing officer who satisfies the impartiality requirements of chapter 24:05:30.~~

If a hearing is requested under this chapter, the parents or the school district involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of this article, except as provided in this section.

The department shall arrange the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer shall make a determination within 10 school days after the hearing.

Unless the parents and school district agree in writing to waive the resolution meeting described in this section, or agree to use the mediation process described in chapter 24:05:30:

(1) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

(2) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

~~The decisions on expedited due process hearings are appealable under the state's normal due process appeal procedures consistent with chapter 24:05:30.~~

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:26:10. Application of ten-day rule. ~~A suspension of more than ten consecutive school days is a change in placement and requires that prior notice be given to a parent, including the right to a due process hearing as specified in this chapter. Nothing in this chapter authorizes a principal or superintendent to suspend a pupil for more than ten days without board action Repealed.~~

Source: 16 SDR 41, effective September 7, 1989; 22 SDR 97, effective January 22, 1996; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996.

General Authority: SDCL 13-37-1.1, 13-32-4.

Law Implemented: SDCL 13-37-1.1, 13-32-4.

Cross-Reference: Procedural safeguards, ch 24:05:30.

24:05:26:12. Court approval of suspension in lieu of parental permission. ~~If the school district needs to suspend an eligible pupil for more than ten consecutive school days and the school is not able to obtain parental agreement for an interim placement or continued suspension, the school district shall apply to a court of competent jurisdiction for permission to do so~~ Repealed.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996.

General Authority: SDCL 13-37-1.1, 13-32-4.

Law Implemented: SDCL 13-37-1.1, 13-32-4.

24:05:26:13. Burden of proof in court action. ~~In filing a suit under the Individuals with Disabilities Education Act, Part B, for appropriate injunctive relief where agreement cannot be reached with the parent for a change of placement, there is a presumption in favor of an eligible pupil's current educational placement which school officials may rebut only by showing that maintaining the current placement is substantially likely to result in injury to the pupil or to others~~ Repealed.

Source: 16 SDR 41, effective September 7, 1989; 23 SDR 31, effective September 8, 1996; 23 SDR 63, effective November 4, 1996; 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1, 13-32-4.

Law Implemented: SDCL 13-37-1.1, 13-32-4.

24:05:26:14. Protections for students not yet eligible. A student who has not been determined to be eligible for special education and related services under this article and who has engaged in behavior that violated any rule or code of conduct of the school district, including any behavior described in this chapter, may assert any of the protections provided for in this article if the school district had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred. A school district is deemed to have knowledge that a student is a student with a disability if:

(1) The parent of the student has expressed concern in writing ~~(or orally if the parent does not know how to write or has a disability that prevents a written statement)~~ to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;

(2) ~~The behavior or performance of the student demonstrates the need for these services;~~

~~(3)~~ (2) The parent of the student has requested an evaluation of the student pursuant to this article; or

~~(4)~~ (3) The teacher of the student, or other personnel of the district or other public agency has expressed ~~concern~~ specific concerns about a pattern of the behavior demonstrated by or performance of the student directly to the director of special education of the district or to other supervisory personnel of the district ~~in accordance with their established child find or special education referral system.~~

A district is not deemed to have knowledge that the student is a student with a disability under this section, if the parent of the student has not allowed an evaluation of the student pursuant to this article, or has refused services under this article, or as a result of receiving the information, the district conducted an evaluation consistent with this article and determined that the student was not a student with a disability ~~or determined that an evaluation was not necessary and if the district provided notice to the student's parents of its determination consistent with this article.~~

If the district does not have knowledge that a student is a student with a disability before taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as measures applied to students without disabilities who engaged in comparable behaviors consistent with this chapter.

If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures under this chapter, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the student shall remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the student is determined to be a student with a disability taking into consideration information from the evaluation conducted by the district and information provided by the parents, the district shall provide special education and related services in accordance with the provisions of this article including the discipline procedures and free appropriate public education requirements.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.

24:05:26:15. Referral to and action by law enforcement and judicial authorities. Nothing in Part B of the Individuals with Disabilities Education Act prohibits a school district or other public agency from reporting a crime committed by a student with a disability to appropriate authorities or to prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

A school district or other public agency reporting a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime. A school district reporting a crime under this chapter may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act, as amended ~~to November 1, 1999~~ to January 1, 2007.

Source: 26 SDR 150, effective May 22, 2000.

General Authority: SDCL 13-37-1.1.

Law Implemented: SDCL 13-37-1.1.